

**United States Department of Labor
Employees' Compensation Appeals Board**

N.L., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
DANVILLE VA MEDICAL CENTER,)
Danville, IL, Employer)

**Docket No. 23-1107
Issued: May 14, 2024**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2023 appellant filed a timely appeal from a June 28, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosis of COVID-19 causally related to the accepted employment exposure.

FACTUAL HISTORY

On March 31, 2023 appellant, then a 36-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she contracted COVID-19 due to exposure at work on March 16, 2023 to a coworker who had COVID-19. She asserted that one coworker tested positive, then she tested positive. Appellant noted that she first became aware of her condition and its relation to her

¹ 5 U.S.C. § 8101 *et seq.*

federal employment on March 16, 2023. She stopped work on March 16, 2023 and returned on March 27, 2023.

In an undated statement, appellant explained that on March 15, 2023 a coworker, who sat less than six feet away from her, tested positive for COVID-19. She indicated that after work on March 16, 2023, she began to feel achy, so she took a home COVID-19 test, which was positive. Appellant reported that her symptoms were body aches, fever up to 102.9 degrees, sinus and chest congestion, and headache. She noted that on March 14, 2023 she received notification that one of the nursing home units was on quarantine through March 23, 2023 due to a positive COVID-19 case. Appellant indicated that a doctor in her clinic also saw patients in this nursing home unit and that the doctor was one of the employees in their clinic who tested positive for COVID-19 as well. She noted that she worked as an advanced medical support assistant in the podiatry clinic and described her duties as checking in patients and working closely with the nurses and doctors.

Appellant submitted a polymerase chain reaction (PCR) test result, dated March 17, 2023, which revealed that she tested positive for COVID-19.

In a development letter dated April 3, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, provided a questionnaire for her completion, and afforded her 60 days to respond. In a separate letter of the same date, OWCP also requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding appellant's occupational disease claim. It afforded the employing establishment 30 days, to respond.

In April 5 and 7, 2023 responses to OWCP's development letter, appellant explained that she believed that she was exposed to COVID-19 while working at the reception desk in the podiatry clinic.

In a response dated April 7, 2023, S.H., a human resource specialist for the employing establishment, indicated that appellant's statement was correct and that she came to work and performed her duties.

In an employing establishment work-related injury/exposure evaluation report dated April 7, 2023, two providers with illegible signatures indicated that appellant had reported that she had tested positive for COVID-19. The providers checked a box indicating that the above diagnosis was a direct result of the workplace accident for the following reasons: "Employee reported working closely with three [coworkers] who tested positive within [six] days of each other in the podiatry clinic."

On April 25, 2023 appellant also filed a traumatic injury claim (Form CA-1) alleging that on March 16, 2023 she contracted COVID-19 when she was exposed to an outbreak of positive COVID-19 cases in the podiatry clinic while in the performance of duty.

In a follow-up letter dated May 16, 2023, OWCP advised appellant that it performed an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the April 3, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In a letter dated May 18, 2023, S.H. further described the circumstances surrounding appellant's exposure to COVID-19.

By decision dated June 28, 2023, OWCP found that appellant established factors of her federal employment, as alleged. However, it denied appellant's claim finding that she had not submitted medical evidence establishing that she contracted COVID-19 causally related to those accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish a claim for COVID-19 diagnosed after January 27, 2023, a claimant must provide: (1) evidence of a COVID-19 diagnosis; (2) evidence that establishes the claimant actually experienced the employment incident(s) or factor(s) alleged to have occurred; (3) evidence that the alleged incident(s) or factor(s) occurred while in the performance of duty; and (4) evidence that the COVID-19 condition is found by a physician to be causally related to the accepted employment incident(s) or factor(s). A rationalized medical report establishing a causal link between a diagnosis of COVID-19 and the accepted employment incident(s)/factor(s) is required in all claims for COVID-19 diagnosed after January 27, 2023.⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosis of COVID-19 causally related to the accepted employment exposure.

The only medical evidence submitted by appellant was an employing establishment work-related injury/exposure evaluation report dated April 7, 2023 signed by two providers with illegible signatures. The Board has held that medical evidence containing an illegible signature

² *Id.*

³ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ FECA Bulletin No. 23-02 (issued December 15, 2022). In accordance with the Congressional intent to end the specialized treatment of COVID-19 claims for Federal workers' compensation under section 4016 of the American Rescue Plan Act (ARPA) of 2021, Public Law 117-2 (March 11, 2021), OWCP issued FECA Bulletin No. 23-02, which updated its procedures for processing claims for COVID-19 diagnosed after January 27, 2023.

has no probative value, as it is not established that the author is a physician.⁷ Therefore, this evidence is insufficient to establish the claim.⁸

As the medical evidence of record is insufficient to establish causal relationship between the diagnosis of COVID-19 and the accepted employment exposure, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosis of COVID-19 causally related to the accepted employment exposure.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁷ *B.R.*, Docket No. 23-0546 (issued August 29, 2023); *G.D.*, Docket No. 22-0555 (issued November 18, 2022); *see T.C.*, Docket No. 21-1123 (issued April 5, 2022); *R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988); *Bradford L. Sullivan*, 33 ECAB 1568 (1982).

⁸ *Id.*